

BEFORE THE IOWA BOARD OF RESPIRATORY CARE

IN THE MATTER OF:)	CASE NO. 09-005
)	DIA NO. 12RCB001
HOLLY HANNAN)	
License No. 002341)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent)	DECISION AND ORDER

On May 15, 2012, the Iowa Board of Respiratory Care (Board) filed a Notice of Hearing and Statement of Charges against Holly Hannan (Respondent) charging her with failing to comply with the terms of a Board order.¹ The hearing was held on February 19, 2013 at 10:08 a.m. before the following members of the Board: Mary Tyrrel, RCP, Chairperson; Kerry George, RCP; Lisa Kingery, RCP; and Arlene Lee, public member. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. Assistant Attorney General Meghan Gavin appeared for the state. Respondent received notice of the hearing by personal service but failed to appear. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1), and was recorded by a certified court reporter. The Board convened in closed session following the hearing to deliberate its decision. The administrative law judge was instructed to prepare the Board's written decision, in accordance with its deliberations.

THE RECORD

The record includes the testimony of Beth Jorgenson and State Exhibits 1-5 (See Exhibit Index for description).

FINDINGS OF FACT

1. On September 10, 2007, Respondent Holly Hannan was issued license number 002341 to practice respiratory care in the state of Iowa. Respondent's Iowa license expired on May 31, 2012. (State Exhibit 1; Official Notice)

¹ The Board granted the state's Motion to Amend Count I of the Notice of Hearing and Statement of Charges to read "Respondent is charged with failure to comply with the terms of a board order in violation of Iowa Code section 147.55(9) and 645 IAC **263.2(19)**."

2. On September 4, 2009, the Board charged Respondent with violation of the terms of an impaired practitioner recovery contract by missing nine calls to the chemical screening program and by testing positive for Hydrocodone and Hydromorphone. (Exhibit 1)

On November 9, 2009, Respondent and the Board entered into a Settlement Agreement and Final Order. Respondent admitted the allegations in the September 4, 2009 Statement of Charges. Respondent's license was placed on probation through June 25, 2012, subject to the following conditions:

- Respondent was required to comply with all requirements of her probationary license in Nebraska;
- Respondent was also required to sign all necessary medical releases to allow the Iowa Board to receive the results of her alcohol and drug testing in Nebraska. Respondent was responsible for ensuring that the Board received these reports at least quarterly.
- Respondent was also required to submit quarterly written reports to the Board no later than January 1, April 1, July 1, and October 1 during the period of her probation. The quarterly reports were to include, in part, information about Respondent's employment, the name and address of Respondent's practice monitor, a record of her compliance with the AA/NA requirement, and a record of her prescription medications, including all controlled substances.

(Testimony of Beth Jorgenson; Exhibit 2)

3. Respondent submitted four quarterly reports in 2010. Respondent has not submitted any quarterly reports to the Board after 2010. On February 7, 2011, Board staff sent Respondent a reminder letter about her reporting requirements. Respondent did not reply to this reminder letter and did not file any additional reports. (Testimony of Beth Jorgenson)

4. On May 15, 2012, the Board issued the Notice of Hearing and Statement of Charges against Respondent. The Notice of Hearing and Statement of Charges were personally served on Respondent on May 16, 2012. (Exhibits 3, 5) On November 20, 2012, the Board issued an Order rescheduling the hearing for February 19, 2013 at 10:00 a.m. The Board Rescheduling Order was served on Respondent by personal service on December 12, 2012. Respondent did not

request a continuance, and she failed to appear for hearing. (Testimony of Beth Jorgenson; Exhibits 4, 5)

CONCLUSIONS OF LAW

I. Failure to Appear

The Notice of Hearing and Statement of Charges may be served on a licensee by personal service; restricted certified mail return receipt requested; or publication.² If a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.³ Respondent was properly served with the Notice of Hearing and Statement of Charges and the Board's Rescheduling Order by personal service but failed to appear for hearing. The Board was authorized to proceed with the hearing in her absence.

II. Failure to Comply

The Board is authorized to revoke, suspend, or otherwise discipline a licensee for failing to comply with the terms of a Board order or the terms of a settlement agreement or consent order.⁴ The preponderance of the evidence established that Respondent failed to comply with the terms of the November 9, 2009 Settlement Agreement and Final Order, in violation of Iowa Code sections 147.55(9) and 645 263.2(19). Respondent only filed the required quarterly reports during the first year of her probation. Respondent did not file any of the required quarterly reports for 2011 or 2012. Respondent has been given ample opportunity to comply. Under the circumstances, the Board has little choice but to suspend Respondent's license.

DECISION AND ORDER

IT IS THEREFORE ORDERED that license number 002341, issued to Respondent Holly Hannan, is hereby INDEFINITELY SUSPENDED, effective immediately upon service of this Decision and Order.

² 645 IAC 11.6.

³ 645 IAC 11.21(1).

⁴ Iowa Code section 147.55(9)(2011); 645 IAC 263.2(19).

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondent shall pay \$75.00 for fees associated with the disciplinary hearing and \$55.00 for the court reporter fees. The total fees of \$130.00 shall be paid within thirty (30) days of receipt of this decision.

IT IS FURTHER ORDERED that Respondent's license may not be reinstated for a minimum period of one year. In any request for reinstatement, the burden will be on Respondent to establish that the reason for the indefinite suspension no longer exists and that it is in the public interest for her license to be reinstated.⁵

Dated this 13th day of March, 2013.



Mary Tyrrel, Chairperson
Iowa Board of Respiratory Care

Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action, unless, within 15 days after the date of notification or mailing of this decision, a motion to vacate is filed and served on all parties or an appeal of the decision on the merits is timely initiated. A motion to vacate shall state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact attached to the motion. 645 IAC 11.21(3). The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate. 645 IAC 11.21(4).

Pursuant to Iowa Code section 17A.19(2013) and 645 IAC 11.29, any appeal to the district court from a decision in a contested case shall be taken within 30 days from the issuance of the decision by the board. The appealing party shall pay the full costs for the transcript of the hearing. 645 IAC 11.23.

cc: Assistant Attorney General Meghan Gavin

⁵ See 645 IAC 11.31.